IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1589 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PURSHOTTAM LALLUBHAI - Petitioner(s)

Versus

MAHIDA RAYSANG FATESANG & 11 - Respondent(s)

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Appearance :

MR AJ PATEL for Petitioner(s) : 1,
MR AN PATEL for Respondent(s) : 1, 10,
RULE UNSERVED for Respondent(s) : 2 - 5.
RULE SERVED for Respondent(s) : 6 - 9,11 - 12.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality

and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 10.1.1986 passed in Revision Application No. TEN.B.A.1301/1983 in dismissing the same and confirming the order passed by the Deputy Collector, Petlad dated 25.7.1983 passed in Tenancy Appeal No.5/1983 as well as the order passed by the Mamlatdar & ALT, Borsad dated 11.10.1982 passed in Tenancy Case No.196/1977.

2. At the outset, it is required to be noted that the dispute is not between the landlord and tenant but the dispute is between two persons who claim the tenancy rights. The dispute is with regard to land bearing Survey No.500 of village Alarsa, Taluka Borsad and the same was belonging to respondent Nos.2 to 12. It appears from the record that the proceedings under Section 32(G) of the Bombay Tenancy Act came to be initiated by the Mamlatdar & ALT, Borsad in which the petitioner remained absent and the purchase was declared ineffective. Thereafter, proceedings under Section 32(P) of the Act was initiated and by order dated 30.8.1968 the land was ordered to be entrusted to the landlords for their personal cultivation. Being aggrieved and dissatisfied with the order dated

30.8.1968 passed under Section 32(P) of the Act, an appeal was preferred before the Special Secretary, and the Special Secretary, by his order dated 27.8.1971 set aside the order of Mamlatdar & ALT, Borsad passed under Section 32(P) of the Act. It also appears from the record that even the order passed under Section 32(P) of the Act was also set aside by the Gujarat Revenue Tribunal and the matter was remanded to the Mamlatdar & ALT, Borsad with direction that the tenant and all the persons interested should be served with notice. The Mamlatdar & ALT, Borsad started fresh inquiry by registering case No.196/1977. It also appears from the record that the respondent No.1 herein-Raysang Fatasang submitted an application for declaring him as the tenant under Section 32(O) of the Act and simultaneously, he submitted an application for joining him as a party in the said inquiry Case No.196/1977 contending inter-alia that he was cultivating the land since last 5 to 6 years as the tenant. The Mamlatdar & ALT, Borsad after holding inquiry and appreciating the evidence on record held that the petitioner was not the tenant as on 1.4.1957, and that there is no documentary evidence to prove that he was cultivating the land as on 1.4.1957. The

Mamlatdar & ALT, Borsad also further held on appreciation of evidence that the respondent No.1 has proved that he was cultivating the land since 1965 as a Ganot (tenant) and therefore, he is entitled to be declared as a tenant under Section 32(O) of the Bombay Tenancy Act. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Borsad dated 11.10.1982 passed in Tenancy Case No.196/1977, the petitioner preferred Tenancy Appeal No.5/1983 before the Deputy Collector, Petlad. The Deputy Collector, Petlad by his order dated 25.7.1983 dismissed the said Tenancy Appeal No.5/1983. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Petlad dated 25.7.1983 passed in Tenancy Appeal No.5/1983 the petitioner preferred Revision Application before the Gujarat Revenue Tribunal being Revision Application No.TEN.B.A.1301/ 1983 and the Gujarat Revenue Tribunal by its judgment and order dated 10.1.1986 dismissed the said Revision Application confirming the orders passed by the both the authorities below. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 10.1.1986 passed in Revision Application No.TEN.B.A.1301/1983, the petitioner has

preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri A.J. Patel, learned advocate appearing on behalf of the petitioner has vehemently submitted that when the proceedings under Section 32(P) of the Act with regard to the tenancy rights of the petitioner were subjudice and pending, there was no question of considering the case of the respondent No.1 who claims to be the tenant under Section 32(O) of the Bombay Tenancy Act as there cannot be two tenancy with regard to one land. It is further submitted that the proceedings under Section 32(P) of the Act was pending and therefore, considering that the respondent No.1 being tenant and that he was cultivating the land as a tenant during the said period was out of question and therefore, it is submitted that all the authorities below have materially erred in declaring the respondent No.1 as the tenant under Section 32(O) of the Bombay Tenancy Act.

4. Shri A.N.Patel, learned advocate appearing on behalf of the respondent No.1 has vehemently submitted that no proceedings under Section 32(P) of the Act was pending and/or so far as the petitioner is concerned, all the

three authorities below have concurrently found that the petitioner was not cultivating the land as the tenant as on 1.4.1957 and therefore, he cannot be declared as the tenant under Section 32(G) of the Bombay Tenancy Act whereas all the three authorities below have concurrently found on appreciation of evidence that the respondent No.1 was cultivating the land in question as the tenant and therefore, he is entitled to be declared as the tenant under Section 32(O) of the Act and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that Proceedings under Section 32(G) of the Bombay Tenancy Act were initiated in which the petitioner remained absent and therefore, the purchase was declared ineffective. Thereafter, the proceedings under Section 32(P) of the Act were initiated and order was passed to hand over the possession of the land in question to the landlords for their personal cultivation. However, the said orders were set aside by the Gujarat Revenue Tribunal and the matter was remanded to the Mamlatdar & ALT, Borsad for deciding the question under Section 32(G) of the Act afresh. On remand, a case was registered as Tenancy

Case No.196/1977 and that in the said case the respondent No.1 also submitted an application claiming himself to be the tenant under Section 32(O) of the Bombay Tenancy Act. On appreciation of evidence and on inquiry, the Mamlatdar & ALT, Borsad held that the petitioner has failed to establish and prove that he was cultivating the land as the tenant as on 1.4.1957and therefore, held that when the petitioner has failed to establish and prove that he was cultivating the land in question as the tenant as on 1.4.1957, he is not required to be declared as a tenant under Section 32(G) of the Act. The Mamlatdar & ALT, Borsad also on appreciation of evidence held that the respondent No.1 was cultivating the land in question as the tenant after 1961 and that he is required to be declared as the tenant under Section 32(O) of the Bombay Tenancy Act. The said order came to be confirmed by the Deputy Collector, Petlad and even further confirmed by the Gujarat Revenue Tribunal. Thus, there are concurrent finding of facts given by the three authorities below that the petitioner was not cultivating the land in question as the tenant as on 1.4.1957 and therefore, he was not required to be declared as the tenant under Section 32(G) of the Act

and that the respondent No.1 was cultivating the land as the tenant for the last 6 to 7 years after 1965 and therefore, he was required to be declared as a tenant under Section 32(O) of the Bombay Tenancy Act. This petition is filed under Article 227 of the Constitution of India and this Court is not required to re-appreciate the evidence on record. It cannot be said that the finding of fact given by all the three authorities below are perverse and/or contrary to the evidence on record. Under the circumstances, the judgment and order passed by the Gujarat Revenue Tribunal in dismissing the Revision Application and confirming the order passed by the Deputy Collector, Petlat as well as passed by the Mamlatdar & ALT, Borsad are not required to be interfered with.

6. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and the same is, accordingly, dismissed.

7. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.